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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,415	01/22/2004	Dale A. Gepfrey	GII 001 P2 US	4545

7590 04/27/2006
Joseph G. Nauman
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Dayton, OH 45429-3415

EXAMINER

STRIMBU, GREGORY J

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,415

Applicant(s)

GEPFREY ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1-13, drawn to a window construction, classified in class 049, subclass 62.
- II. Claims 14-18, drawn to a method of constructing a window, classified in class 049, subclass 506.
- III. Claims 19 and 20, drawn to a corner section for a window framework, classified in class 049, subclass 504.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another materially different process such as extruding the corners and the lineal extrusion pieces.

Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product such as one that does not include corner

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sections having diverging end sections arranged at a predetermined angle to each other.

Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination requires corner sections having diverging end sections arranged at a predetermined angle to each other. The subcombination has separate utility such as use in a door frame.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Joseph G. Nauman on April 25, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in

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the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to because the applicant has not used the proper cross sectional shading when showing the invention in cross section. For example, see figure 3A where the sash profile 40R and 40S is not shown with the proper cross sectional shading. See MPEP 608.02. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

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be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is too long. On line 22, it is suggested the applicant include the word --work-- following frame. On line 22, "internal sash sections" is confusing since it is unclear whether or not the applicant is referring to the internal sashes set forth above. Likewise, "preformed corner pieces" on

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line 25 is confusing since it is unclear whether or not the applicant is referring to the formed corner sections set forth above. Finally, "the lineal extrusion pieces" on line 27 is confusing since it is unclear whether or not the applicant is referring to the lineal sections set forth above. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "joined" on line 3 of claim 1 render the claims indefinite because it is unclear to what element of the invention the rails are joined. Are the lineal rails joined to one another? Recitations such as "the joints" on line 7 of claim 1, "the exteriorly visible parts" on line 8 of claim 1, "the assembled window" on line 10 of claim 1, "the rigid water-tight joint" on lines 2-3 of claim 2, and "said lineal extrusion pieces" on line 3 of claim 4 render the claims indefinite because they lack antecedent basis.

Recitation such as "said male splines" on line 4 of claim 4 render the claims indefinite because it is unclear if the applicant is referring to the male spline fitting set forth above or is attempting to set forth splines in addition to the ones set forth above. Recitations such as "the channels" on line 8 of claim 6 render the claims indefinite because they lack antecedent basis. Recitations such as "an interior opening" on line 9 of claim 6 render the claims indefinite because it is unclear if the applicant is referring to the opening set forth above or is attempting to set forth another opening in addition to the

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one set forth above. Recitations such as "at least one . . . is partially opened" on lines 13-151 of claim 6 render the claims indefinite because it is unclear what the applicant is attempting to set forth. First, the applicant has set forth only one sash frame above. Second, it is unclear how a sash frame can move along itself. Recitations such as "and/or" on line 3 of claim 12 render the claims indefinite because it is unclear what is meant by the recitation "/". Is the applicant setting forth "or" or "and" or is the applicant setting forth "and" and "or"?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guarnacci in view of UK Patent Application 2 150 182. Guarnacci discloses a window construction comprising an exterior frame (not numbered, but shown in figure 3) including at least four integrally formed frame corners 1b, 2b, 5b, 6b and at least four lineal rails 102, 120, 122, 126 joined between said frame corners to define the exterior shape of the frame outer edges and the shape of the edges of an interior opening (not numbered, but shown in figure 3 occupied by the inner sash) surrounded by the frame, the lineal rails providing the header, sill, and jambs of the frame, the joints of said formed corners and rails having rigid joint sections 80, 92 which present a smooth

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exterior at least on the exteriorly visible parts of the joints, said corners and rails also having integral exterior frame flanges (not numbered, but shown in figures 25 and 26) extending outward thereof for attachment of the assembled window into a window aperture, said rails having at least one frame channel (not numbered, but shown in figures 25 and 26) the corners having at least one frame channel (not shown, but shown in figures 8 and 12) and extending about the interior opening to receive and support a window pane, and said rails and corners being formed from essentially the same material, the joint sections have spline sections 82 and 84 and the linear sections have female sections (not shown), a sash construction including at least one set of four sash lineal pieces 32, 35, 36, 42, 62 and at least four integral formed sash corners 1a, 2a, 5a, 6a joined to define at least one sash frame dimensioned to fit within said frame channel, said sash lineal pieces and formed sash corners defining the exterior shape of the sash frame outer edges to conform to the channels, and also defining the shape of the edges of an interior opening (not numbered, but shown in figure 3) surrounded by the frame, said lineal pieces providing the header, sill, and jambs of the sash frame, said sash lineal pieces and corners forming a sash channel 32X (also see column 4, lines 15-17) to receive a window pane within the sash frame, at least one of said sash frames being movable along its channel such that the jambs of the two sashes overlap and close the interior opening of the exterior frame, and to positions along its channel wherein the window is partially opened. Guarnacci is arguably silent concerning water-tight joint sections.

However, UK Patent Publication 2 150 182 discloses the use of a sealant to connect corner sections of a frame to lineal rails of the frame. See page 2, lines 80-84.

It would have been obvious to one of ordinary skill in the art to provide Guarnacci with a sealant, as taught by UK Patent Publication 2 150 182, to seal against water penetration and to add strength to the joint.

With respect to claim 5, the recitation to welding has been treated as a product-by-process limitation. Therefore, the combination of the teachings from Guarnacci in view of UK Patent Publication 1 150 182 anticipates the limitations of claim 5 since the combination discloses the claimed apparatus.

With respect to claim 11, the recitations to extruding and molding have been treated as product-by-process limitations. Accordingly, the combination of teachings of Guarnacci and UK Patent Publication 1 150 182 anticipates claim 11 since the combination discloses the claimed apparatus.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guarnacci in view of UK Patent Publication 2 150 182 as applied to claims 1-12 above, and further in view of Kenkel.

Kenkel discloses a window construction comprising a sill 28 wherein the sill has an outwardly and downwardly sloped surface 53 as shown in figure 6.

It would have been obvious to one of ordinary skill in the art to provide Guarnacci, as modified above, with a sloped surface, as taught by Kenkel, to ensure that water is drained away from the sill.

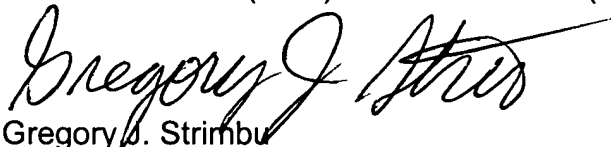
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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Valderrama, MacDonald et al., Dotson et al., Collins et al., Molyneux, Nowell, Borys, Slocomb, Guillemet et al., UK Patent Application Nos. 2 036 912, 2 275 290 and 2 146 060, European Patent Application No. 0 555 929 are cited for disclosing a window construction having a modular construction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu

Primary Examiner

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April 26, 2006